§ 108. Rates of interest; installment obligations; personal loan departments. 1. Except as otherwise provided in this section, no bank or trust company shall take, receive, reserve or charge on any loan or discount made, or upon any note, bill of exchange or other evidence of debt, negotiable or otherwise, interest, as computed pursuant to this subdivision, at a rate greater than the rate prescribed by the superintendent of financial services pursuant to section fourteen-a of this chapter, or, if no rate has been so prescribed, six per centum per annum, or two dollars if the interest so computed is less than that amount. Such interest may be taken in advance, reckoning the days for which the note, bill or evidence of debt has to run. If interest is so taken in advance and the maturity of the debt is accelerated and judgment is obtained, or the debt is otherwise paid prior to its normal date of maturity, the bank or trust company shall refund to the obligor or his legal representative, as the case may be, the unearned interest previously deducted and the unused portion of any premiums charged for insuring the obligor under a group credit insurance policy, such refund to be calculated in accordance with the method described in paragraph (e) of subdivision four of this section. A reasonable charge by a bank or trust company for the collection of a bona fide bill of exchange, note or other evidence of debt payable at a place other than the place where purchased, discounted or sold, in addition to the interest, shall not be considered interest for the purpose of any law regulating the maximum rate of interest which may be charged, taken or received.

Anything contained in this subdivision to the contrary notwithstanding, the charging of interest or discount on a loan or discount made outside this state at a rate allowed by the laws of the jurisdiction where such loan is made, or the acquisition by a bank or trust company of a part interest or the entire interest in any loan or discount heretofore or hereafter made by a bank or trust company or any other banking institution, shall not be a violation of this section.

2. Any bank or trust company may purchase or otherwise acquire from the payee, owner or holder thereof any obligation in writing to pay in installments all or part of the price of personal property or that of the performance of services, whether that obligation be a negotiable

promissory note or other evidence of debt, or any accounts receivable, whether or not they are obligations in writing, or any lease of personal property, and may lease personal property acquired by it, doing so for such price or rentals or other consideration and upon such additional terms and conditions as may be mutually agreeable.

3. Upon advances of money, repayable on demand, to an amount not less than five thousand dollars, made upon documents of title within article seven of the uniform commercial code or negotiable instruments within article three or article eight of the uniform commercial code pledged as collateral security for such repayment, any bank or trust company may receive or contract to receive and collect as compensation for making such advances any sum which may be agreed upon by the parties to such transaction.

4. (a) A bank or trust company may operate a personal loan department at all or at any one or more of its authorized places of business in accordance with the requirements of this subdivision. The records of such department shall be kept in such form as the superintendent may from time to time prescribe. The superintendent may, after giving notice of the contemplated action and reasonable opportunity to be heard, order that the operation of such department be discontinued if he shall find that the bank or trust company has failed to conform to any requirement of this subdivision. The superintendent may forthwith, and for a period not to exceed thirty days pending further investigation, order that the operation of any such department be temporarily discontinued if he shall have reasonable cause to believe that the requirements of this subdivision are not having compliance. Such order of discontinuance or temporary discontinuance may apply to one or more of the authorized places of business of a bank or trust company. The superintendent may terminate or modify such orders if he shall be satisfied that such department will be operated in accordance with the requirements of this subdivision. No order of discontinuance or temporary order of discontinuance shall impair or affect the obligation of any preexisting lawful loan or advance from a bank or trust company to any borrower.

(b) A bank or trust company which operates a personal loan department may make loans and charge interest thereon, which may be calculated on

the actual unpaid principal balances of the loan or in the case of a loan commitment from the date of each advance thereunder for the actual time outstanding, according to a generally accepted actuarial method at a fixed or variable rate in accordance with the provisions of the evidence of the indebtedness, or taken in advance, computed from the date of the loan, or in the case of a loan commitment from the date of each advance thereunder, to the date of the last installment payable thereunder, at the rate or rates agreed to by the bank or trust company and the borrower, with respect to any loan which is repayable at regular periodic intervals of not more than one month over a period from the date of the loan not exceeding (i) thirty-seven months, if the face amount of the loan is for not more than twelve hundred dollars, or (ii) any number of months agreed to by the bank or trust company and the borrower, (A) if the face amount of the loan is for more than twelve hundred dollars, (B) if the loan is for more than twelve hundred dollars, and is made for a commercial or business use or purpose or for investment in or purchase of an unincorporated business or commercial enterprise, (C) if the loan or loan commitment is made for educational purposes as specified in subdivision five-b of this section, or (D) if the loan or advance of credit is made for the purpose of financing alterations, repairs and improvements upon or in connection with, or as the superintendent may authorize the equipping of existing structures, and the building of new structures, upon urban, suburban, or rural real property (including the restoration, rehabilitation, rebuilding and replacement of such improvements which have been damaged or destroyed by earthquake, conflagration, tornado, hurricane, cyclone, flood or other catastrophe), by the owners thereof or by lessees of such real property under a lease expiring not less than six months after the maturity of the loan or advance of credit or by lessees under proprietary leases from corporations or partnerships formed for the purpose of the cooperative ownership of real estate. The total unpaid principal balances of any one or more loans made by such bank or trust company to the borrower pursuant to this subdivision shall be determined by agreement between such bank or trust company and the borrower. If the loan is made for a period of one year or more, provision may be made in the note, instrument or other evidence of debt, for the omission of payments during not more than any three specified months in any

twelve-month period, but the maximum period of thirty-seven months, shall not be exceeded. On any loan with a variable rate of interest made pursuant to this paragraph, the rate shall be determined at regular intervals as set forth in the evidence of indebtedness and in accordance with such regulations as the superintendent of financial services shall prescribe but said rate shall not vary more often than once in any three month period and shall be based on a published index that is (a) readily available, (b) independently verifiable, (c) beyond the control of the bank or trust company and (d) approved by the superintendent.

The superintendent of financial services shall adopt regulations, including but not limited to: (a) providing for disclosure to the borrower by the bank or trust company of the circumstances under which the rate may increase, any limitations on the increase, the effect of an increase and an example of the payment terms that would result from an increase; (b) providing for disclosure to the borrower by the bank or trust company of a history of the fluctuations of the index over a reasonable period of time; and (c) providing for notice to the borrower from the bank or trust company prior to any rate increase or change in the terms of payment.

(c) The rate of interest authorized by this subdivision shall be inclusive of all charges incident to investigating and making any loan. No fee, commission, expense, or other charge whatsoever in addition thereto shall be taken, received, reserved, or contracted for, except (i) the fees payable to the appropriate public officer to perfect any lien or other security interest taken to secure the loan or the premium, not in excess of such filing fee, payable for any insurance in lieu of such filing; (ii) in case of default, and in accordance with the provisions of the instrument evidencing the obligation, either a fine in an amount not to exceed five cents per dollar on any installment which has become due and remained unpaid for a period in excess of ten days, but no such fine shall exceed five dollars and only one fine shall be collected on any such installment regardless of the period during which it remains in default, and provided further that should the aggregate of such fines collected in connection with any loan exceed two per centum of such loan, or in any event twenty-five dollars, the bank or trust company shall refund such excess to the borrower within sixty days after

the loan is paid in full, or, subject to an allowance of unearned interest attributable to the amount in default, interest on each amount past due at a rate not in excess of the rate provided for in the instrument evidencing the obligation; (iii) the actual expenditures, including reasonable attorney's fees for necessary court process; and (iv) in case the bank or trust company insures a borrower under a credit unemployment insurance policy, group life insurance policy, group health insurance policy, group accident insurance policy, or group health and accident insurance policy, or requires insurance on personal property securing any such loan, an amount not in excess of the premiums chargeable in accordance with rate schedules then in effect and on file with the superintendent of financial services for such insurance by the insurer. No bank or trust company shall require a borrower to place any sum on deposit, or to make deposits in lieu of regular periodic installment payments, or to do or refrain from doing any other act which would entail additional expense or sacrifice, as a condition precedent to granting a loan under the authority of this subdivision except as provided in subdivision five-b of this section. Notwithstanding the foregoing, a bank or trust company may, with the prior approval of the superintendent, offer a loan product that encourages personal savings by requiring a borrower to place a portion of the principal of the loan into an interest-bearing savings account as a condition precedent to granting a loan under the authority of this subdivision. In deciding whether to approve a loan product pursuant to the preceding sentence, the superintendent may consider the recent results of examinations of the bank or trust company, the terms and structure of, and the underwriting criteria and marketing plan for the proposed loan product, other loans offered by the bank or trust company, and such other factors the superintendent deems to be relevant. Notwithstanding the provisions of this paragraph no refund of excess fines shall be required if it amounts to less than one dollar.

(d) In each note, instrument or other evidence of debt given by a borrower to evidence a loan under this subdivision, where such loan is not subject to the provisions of the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended, the rate of charge (stating any minimum as permitted by this subdivision four), shall be expressed

either in accordance with the method prescribed by such act of congress or: (i) as a rate in dollars per annum discount per one hundred dollars face amount of loan, or (ii) as the rate or rates agreed to by the bank or trust company and the borrower.

(e) A borrower may prepay the loan in full or, with the consent of the bank or trust company, may refinance the loan. If the interest is calculated on the actuarial basis, or if the evidence of the indebtedness provides that the rate of interest may vary from time to time, a borrower may prepay the loan in full without penalty. If the interest was taken in advance, in the event of such prepayment or refinancing, the bank or trust company shall refund: (1) the unearned portion of the interest to the borrower the amount of which portion shall be determined according to a generally accepted actuarial method; provided, however, that if the amount of interest previously deducted (i) was less than ten dollars, no refund shall be required; or (ii) exceeded the sum of ten dollars and the earned interest is less than that amount, the bank or trust company may retain such an additional amount as will bring the earned interest to the sum of ten dollars and refund the remainder, and provided further, that unless the loan is refinanced, no refund shall be required if it amounts to less than one dollar; and (2) if a charge was made to the borrower for premiums for insuring the borrower under a credit unemployment insurance policy, group life insurance policy, or under a group health, group accident or group health and accident insurance policy, the excess of the charge to the borrower therefor over the premiums paid or payable by the bank or trust company, if such premiums were paid or payable by the bank or trust company periodically, or the refund for such insurance premium received or receivable by the bank or trust company, if such premium was paid or payable in a lump sum by the bank or trust company, provided that no such refund shall be required if it amounts to less than one dollar. In the event (i) the maturity of the loan is accelerated due to the default of the borrower or otherwise and judgment is obtained, or (ii) repayment is made pursuant to any such insurance policy, the borrower or his legal representative, as the case may be, shall be entitled to the same refund as if the loan had been prepaid in full on the date of acceleration or repayment.

(f) A bank or trust company may, upon agreement with the borrower,

extend the scheduled due date or defer the scheduled payment of all or any part of any installment or installments payable under the loan. The agreement for such extension or deferment must be in writing and signed by the borrower. The bank or trust company may charge and contract for the payment of an extension or deferral charge by the borrower and collect and receive the same, at the rate or rates agreed to by the bank or trust company and the borrower, on the amount of the installment or installments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred installment or installments, or part thereof, would have been payable in the absence of such extension or deferral, to the date when such installment or installments, or part thereof, are made payable under the agreement of extension or deferment; except that a minimum charge of one dollar for the period of extension or deferral may be made in any case where the extension or deferral charge, when computed at such rate, amounts to less than one dollar. Such agreement may also provide for the payment by the borrower of the additional cost to the bank or trust company of premiums for continuing in force, until the end of such period of extension or deferral, any insurance coverages provided in connection with the loan subject to the other provisions of this subdivision.

(g) If the borrower is obligated in connection with the loan to maintain insurance on a motor vehicle securing the loan and if subsequent to the making of the loan the borrower fails to maintain the insurance, the bank or trust company may make advances to procure the equivalent limits of insurance for either the interests of the borrower and the bank or trust company or of either of them, and any amount so advanced may be the subject of an interest charge from the date of such advance as though such amount was part of the unpaid principal balance of the loan. Each amount so advanced shall be secured by the personal property if so provided in the security agreement covering the personal property and if the bank or trust company notifies the borrower in writing of the advance of such amount and of his or her option to repay such amount in any one of the following ways:

(1) Full payment within ten days from the date of giving or mailing the notice;

(2) Full amortization during the term of the insurance or the

remaining term of the loan, at the option of the bank or trust company;

(3) If offered by the bank or trust company, as a final balloon payment payable one month after the last scheduled payment in connection with the loan;

(4) If offered by the bank or trust company, full amortization after the term of the loan, to be payable in instalments which do not exceed the average instalment payable in connection with the loan; or

(5) If offered by the bank or trust company, any other amortization plan.

If the borrower neither pays in full the amount so advanced nor notifies the bank or trust company in writing of his or her choice regarding amortization options before the expiration of ten days from the date of giving or mailing of the notice by the bank or trust company, the bank or trust company shall amortize the amount so advanced pursuant to subparagraph two of this paragraph.

5. (a) A bank or trust company which operates a personal loan department pursuant to paragraph (a) of subdivision four hereof may establish credits under written agreements with borrowers, pursuant to which one or more loans or advances to or for the account of a borrower may be made from time to time, by means of honoring one or more checks or other written, electronic or telephonic orders or requests of the borrower and may charge interest on such loans and advances at the rate permitted by paragraph (b) of this subdivision, provided such loans and advances comply with the provisions of this subdivision. This subdivision does not authorize any bank or trust company to make any loan or advance in connection with the purchase or lease of goods or services by means of a credit card as defined in section five hundred eleven of the general business law, except for a loan or advance resulting from the use of a card which may be used to access a deposit account and line of credit associated with that account. The records of such loans and advances shall be kept in such form as the superintendent may from time to time prescribe.

(b) Such agreement may provide for interest on the unpaid aggregate principal amount of such loans and advances from time to time outstanding at the rate or rates agreed to by the bank or trust company

and the borrower, as computed pursuant to this section, including, in accordance with the provisions of the agreement, rates that may vary from time to time reckoned on each loan or advance from the date thereof, calculated on any of the following bases: (i) on the unpaid principal amount of such loans and advances from time to time outstanding, or (ii) for each month on an average balance outstanding determined by dividing by two the sum of the balances of unpaid principal of such loans and advances outstanding on two dates during such month, as specified in such agreement; the first of which dates being not later than the fifteenth day of such month and the second being not earlier than the sixteenth day of such month and not less than ten nor more than twenty days after the first date, or (iii) for each month on a fixed amount selected from a schedule, which fixed amount may exceed the average daily balance under (i) above, or the average balance if determined under (ii) above, by a differential of not more than five dollars, provided the same fixed amount is also used for computing interest for any month for which such balance exceeds said fixed amount by any amount up to at least the same differential. For purposes of this subdivision, a month may but need not be a calendar month, and a bank or trust company computing interest on a daily basis may charge for each day one thirtieth of the monthly interest rate. No amendment to any agreement shall take effect unless at least 30 days prior to the effective date of such amendment, imposition or increase, a written notice has been mailed or delivered to the borrower that clearly and conspicuously describes such amendment, imposition or increase and the indebtedness to which it applies and if the amendment has the effect of increasing the rate of interest, either (a) the notice states that the incurrence by the borrower or another person authorized by him of any further indebtedness under the plan to which the agreement relates on or after the effective date of such change specified in the notice shall constitute acceptance of such change, and either the borrower agrees in writing to such change or the borrower or another person authorized by him incurs such further indebtedness on or after the effective date of the change stated in the notice, or (b) the notice advises the borrower that he has thirty days from the earlier of the mailing or delivery of the notice to advise the bank or trust company in writing that he does not accept such amendment, provided that such notice contains an address

to which the borrower may send notice of his election not to accept the amendment and also provided that the notice specifies that the amendment will take effect absent receipt of the borrower's written objection to the amendment. Any borrower who has received a notice pursuant to clause (a) who does not agree in writing to the amendment and no further indebtedness is incurred under the plan to which the agreement relates, and any borrower who gives a timely notice, pursuant to clause (b), electing not to accept the amendment shall be permitted to pay his outstanding indebtedness in accordance with the terms of the agreement but the bank or trust company may terminate the amount of credit available to the borrower and may require the borrower to return all credit cards and checks issued in connection with the agreement. If such a borrower subsequently obtains credit under the agreement, such use shall constitute acceptance of the change of terms and shall be deemed to have been accepted and shall become effective as to the borrower as of the date such change would have become effective but for the giving of notice by the borrower. If notice is given pursuant to clause (b) and the borrower does not timely object in writing to the amendment, such amendment shall become effective without action on the part of the borrower; provided that in no event shall any such amendment or increase take effect with respect to (i) the unpaid aggregate principal amount of loans or advances representing indebtedness outstanding prior to January 1, 1981 and (ii) the unpaid aggregate principal amount of loans or advances representing indebtedness incurred, under or pursuant to an agreement in effect on December 1, 1980, between January 1, 1981, and the effective date of such amendment or increase specified in the first notice mailed or delivered pursuant to clause (a). Indebtedness outstanding prior to January 1, 1981, for purpose of clause (i) above and indebtedness outstanding prior to the effective date of an increase for purposes of clause (ii) above shall be determined on the basis of crediting payments and other credits first to that portion of any such indebtedness representing interest charges, insurance premiums, service charges and fines and then to that portion representing the principal amount of loans or advances in the order in which made. The provisions of this paragraph permitting an increase in a rate of interest shall not apply in the case of an agreement which expressly prohibits changing of interest rates or which provides limitations on changing of interest

rates which are more restrictive than the requirements of this paragraph. An amendment to an agreement deleting a provision that the rate of interest may vary from time to time may not become effective within one year from the later of the effective date of the agreement or the effective date of an amendment to an agreement adding a variable rate provision. On any loans or advances with rates of interest that may vary from time to time made pursuant to this paragraph, such variable rates of interest shall be determined at regular intervals as set forth in the agreement and in accordance with such regulations as the superintendent of financial services shall prescribe but said rate shall not vary more often than once in any three month period and shall be based on a published index that is (a) readily available, (b) independently verifiable, (c) beyond the control of the bank or trust company and (d) approved by the superintendent, (e) such loan rate shall be based on the index values, or the index numbers plus or minus additional percentage points provided, however, that variations in the rate must correspond directly to the movements of the index values plus or minus additional percentage points only. Once such rate is established no lending institution may add any factors to increase the rate other than variations in the established index without the prior approval of the superintendent of financial services. For purposes of this paragraph, an adjustment in the rate of interest as a consequence of movement in the selected index shall not constitute an amendment to that agreement. A reduction in the grace period for the assessment of a fee on any installment not paid when due, shall be considered an amendment to an agreement as set forth in this paragraph.

The superintendent of financial services shall adopt regulations with respect to agreements that provide for a variable rate of interest, including but not limited to: (a) providing for disclosure to the borrower by the bank or trust company of the circumstances under which the rate may increase, any limitations on the increase, the effect of an increase and an example of the payment terms that would result from an increase; (b) providing for disclosure to the borrower by the bank or trust company of a history of the fluctuations of the index over a reasonable period of time; and (c) providing for notice to the borrower from the bank or trust company prior to any rate increase or change in

the terms of payment. The regulations shall allow a bank or trust company after choosing an approved index to choose a spread and a minimum and maximum rate of interest at its discretion.

A written agreement, whether it provides for a fixed or variable interest rate, may provide for an introductory rate of interest at either a fixed or a variable rate, provided that the terms of such introductory rate, including, if applicable, the date on which the introductory rate shall terminate, are disclosed to the borrower. Such disclosure shall be contained on an application form or pre-approved written solicitation as specified pursuant to subdivisions one and one-a of section five hundred twenty of the general business law. A change in the interest rate upon expiration of an introductory rate shall not be considered a variable rate or a change in terms. The interest rate in effect after expiration of an introductory rate may apply to all amounts due under the agreement regardless of when incurred and disclosure of the same shall be provided to the borrower in the written agreement.

Any interest charge, whether assessed by a fixed or variable rate, may be reduced on such terms as the bank or trust company may determine, provided that the terms of such reduction, including, if applicable, the date on which the reduction will terminate, are disclosed to the borrower on the written notice announcing the reduction, prior to the effective date of the reduction. A new method of determining an interest charge is a reduction in the interest charge if the charge determined under the new method never exceeds the charge under the original method. The original interest charge or original method of determining the interest charge may be applied after the reduction ends to the entire outstanding indebtedness, including any indebtedness incurred when a reduced interest charge applied and disclosure of the same shall be provided to the borrower in the written notice announcing the reduction. A reduction to an interest charge, including the resumption of the original interest charge or the original method of determining the interest charge, shall not be considered an amendment of the agreement for purposes of this paragraph.

(c) The aggregate unpaid principal amount of all such loans and advances to a borrower made pursuant to this subdivision by a bank or

trust company at any one time outstanding shall be determined by agreement between such bank or trust company and the borrower except to the extent that such loans or advances are made pursuant to a written agreement providing for establishing credits for a primarily commercial or business use or purpose or for investment in or purchase of an interest in an unincorporated business or commercial enterprise.

(d) The aggregate unpaid principal amount of all loans and advances outstanding at any time pursuant to this subdivision shall be repayable at regular periodic intervals of not more than one month and for such term as agreed upon by such bank or trust company and the borrower; provided, however, that nothing herein shall prohibit a bank or trust company from providing in any agreement for the omission of payments for three consecutive specified months during any consecutive twelve month period. The initial installment of any loan or advance may be deferred for a period of not more than sixty-five days from the date of such loan or advance; provided, however, that the installments payable during any such period on any prior loans or advances shall not be affected by any such deferment. Provided, however, that an agreement may require a minimum installment as agreed upon by the parties.

The borrower may at any time prepay the amount owing in part or in full, with interest to the date of prepayment.

Notwithstanding the foregoing provisions of this paragraph, each installment or other amount paid by the borrower to the bank or trust company may be applied to interest, insurance premiums, service charges, fines and principal in the order named, or in any such manner as the agreement may provide. The term "installment" may be deemed to include or exclude amounts to be applied to interest, insurance premiums, service charges and fines.

(e) The fees and charges authorized by this paragraph and paragraph (b) of this subdivision shall be inclusive of all charges to the borrower incident to investigating and making any such loan or advance. No fee, commission, expense, or other charge to the borrower whatsoever shall be taken, received, reserved, or contracted for, except as provided in this subdivision. In addition to the interest charge permitted under paragraph (b) of this subdivision, the bank or trust

company may charge, receive and collect any one or more of the fees and charges described in this paragraph, provided that any such fee or charge is set forth in the written agreement with the borrower. The bank or trust company may contract with the borrower for the payment by the borrower of: (i) a service charge either as a percentage or an amount upon each such check or other written, electronic or telephonic order or request which is approved; (ii) a charge in an amount or percentage for each check or other written, electronic or telephonic order or request to obtain money from a credit line that cannot be approved since the borrower is in violation of the terms of the agreement or payment of such order or request would cause borrower to be in violation of the terms of the agreement; (iii) a fee for any installment which is not paid on or before the date on which it is due. A bank or trust company that imposes the charge described in this subparagraph without allowing a grace period of at least ten days must credit any cash payment made by a borrower to a teller at a branch where deposits are accepted by the bank or trust company, as of the date of receipt of the payment; (iv) the actual expenditures, including reasonable attorneys' fees for necessary court process; (v) in case the bank or trust company insures a borrower in accordance with applicable insurance law, including but not limited to under a credit unemployment insurance policy, group life insurance policy, group health insurance policy, group accident insurance policy, or group health and accident insurance policy, an amount for each month which, notwithstanding any other law, may be computed on the amount of the borrower's entire unpaid indebtedness under this subdivision except in the case of a loan or loan commitment made under this subdivision for educational purposes as specified in subdivision five-b of this section, and then on an amount no greater than the unpaid balance of the borrower's scheduled periodic payments, whether due or not due, upon the loan or loan commitment, at a rate not in excess of the premiums chargeable for such month in accordance with rate schedules then in effect and on file with the superintendent of financial services for such insurance by the insurer; (vi) if loans or advances may be obtained by use of a credit card issued by the bank or trust company to the borrower, an annual fee for membership in the credit card plan. If the borrower has requested the issuance of a credit card, the fee for the first year may be charged by the bank or trust

company at any time. The bank or trust company shall in each subsequent year in which an annual fee is payable, send the borrower in or with the statement for the monthly billing period before that in which the fee is to be billed, a notice that the annual fee will be billed in the next monthly statement. A borrower who is not delinquent or otherwise in breach of any term of the agreement with the bank or trust company shall have the right during the first six months after the annual fee is billed to notify the bank or trust company in writing, at its address on the credit agreement, to terminate the borrower's account and request a refund of the unused portion of the annual fee previously paid. Upon receipt of the termination notice and refund request from such borrower, the bank or trust company shall refund to the borrower the unused pro rata share of any annual fee previously paid as of the first billing statement date after receipt of the termination notice; and (vii) an overlimit charge which may be imposed whenever the specified credit limit is exceeded but not more than once in a monthly billing cycle. If the overlimit charge is imposed, the credit limit must be disclosed on the monthly billing statement; and (viii) a returned payment charge, in the amount set forth in section 5-328 of the general obligations law, for any check or other method of payment that is returned unpaid, excluding payment made by automated teller machine or other electronic media; (ix) a charge for replacement of lost or stolen credit cards, which charge shall be applied only where a borrower has suffered a lost or stolen credit card after two replacements thereof; (x) a charge for additional credit cards for the borrower's account; and (xi) a charge for copies of sales slips, cash advance slips, monthly statements and other documents when such copies are not required by federal or state law governing billing error disputes.

The fees and charges set forth in this paragraph shall not be considered in applying sections 190.40 and 190.42 of the penal law. For purposes of 12 U.S.C. §§ 85, 1831d, 1463(g) and 1785(g), the fees and charges permitted under this paragraph are interest under New York law, and all terms, conditions, and other provisions of a written agreement between a bank or trust company and a borrower, including without limitation, fees and charges, provisions related to the method of determining the outstanding balance on which an interest charge is

imposed and circumstances in which an interest charge may be avoided, are material to the determination of the interest rate under New York law.

(f) No bank or trust company shall require a borrower to keep any sum on deposit, or to make deposits in lieu of regular periodic installment payments, or to do or refrain from doing any other act which would entail additional expense or sacrifice, as a condition precedent to the entering into of the agreement or granting of a loan or advance under the authority of this subdivision, except as provided in subdivision five-b of this section, provided, however, that nothing herein shall be construed to prohibit a borrower from agreeing that such loans and advances may be disbursed by crediting a demand deposit account to be opened or maintained by the borrower on the same terms as are offered generally by the bank or trust company to all or any class or classes of demand deposit customers, and provided further, that a bank or trust company may require a pledge to such bank or trust company of a specifically identified interest-bearing deposit account at such bank or trust company as collateral security for a loan made by such bank or trust company under the authority of this subdivision.

5-a. A bank or trust company may make loans secured by mobile home chattel paper evidencing a monetary obligation incurred to finance the purchase of a mobile home located at the time of such purchase, or to be located within ninety days, at a semipermanent site within the state or in a contiguous state and to be maintained as a residence of the borrower, the borrower's spouse, child, grandchild, parent or grandparent.

(1) For this subdivision:

(i) "mobile home chattel paper" means written evidence of both a monetary obligation and a security interest of first priority in a mobile home and any equipment installed or to be installed therein; and

(ii) "mobile home" or "manufactured home" means a structure, transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to

required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein.

(2) If the loan is for the purpose of financing the purchase of a new mobile home,

(i) it shall mature not later than two hundred forty months after the date thereof, and

(ii) the amount advanced shall not exceed one hundred per cent of the sum of (a) the manufacturer's invoice price of such mobile home (including any installed equipment), excluding freight, plus (b) the invoice price of the manufacturer of any new equipment installed or to be installed by the dealer, excluding freight.

(3) If the loan is for the purpose of financing the purchase of a used mobile home,

(i) it shall mature not later than two hundred forty months after the date of the loan, and

(ii) the amount advanced shall not exceed one hundred per cent of the purchase price of the used mobile home actually paid or the wholesale value of such mobile home (including any installed equipment) as established in the dealer's market, whichever is the lower.

(4) The loan shall be payable in equal or substantially equal monthly installments calculated from the date of the loan. Interest, which may be taken in advance, may be charged thereon, computed from the date of the loan to the date of the last installment payable thereunder, if the loan has a maturity (i) not exceeding thirty-seven months, at a rate not to exceed six dollars per annum discount per one hundred dollars of the face amount or ten dollars if the interest so computed is less than that amount, or (ii) exceeding thirty-seven months, at a rate not to exceed five dollars per annum discount per one hundred dollars of the face amount or ten dollars, if the interest so computed is less than that amount; provided that the interest which may be charged, if it exceeds ten dollars, shall not exceed one per cent per month on the unpaid principal balance.

(5) The authorized interest shall include all charges incident to investigating and making any loan. No fee, commission, expense, or other charge shall be permitted except that the bank or trust company may contract to charge the borrower (i) the fees payable to a public officer to perfect any lien or other security interest taken to secure the loan,

or the premium, not in excess of such fee, payable for any insurance in lieu of such filing; (ii) in case of default, and in accordance with the instrument evidencing the obligation, either a fine in an amount not to exceed five per cent on any installment which has become due and remained unpaid for a period in excess of ten days, but no such fine shall exceed five dollars and only one fine shall be collected on any such installment regardless of the duration of the default, and provided further that should the aggregate of such fines collected in connection with any loan exceed two per cent of such loan or twenty-five dollars the bank or trust company shall refund such excess within sixty days after the loan is paid in full, or, subject to an allowance of unearned interest attributable to the amount in default, interest on each amount past due at a rate not in excess of one per cent per month during the period of delinquency; (iii) the actual expenditures, including reasonable attorney's fees for necessary court process, and (iv) in case the bank or trust company insures a borrower under a credit unemployment insurance policy, group life, health, accident, or health and accident insurance policy, or requires insurance on the property securing such loan, an amount not in excess of the premiums lawfully chargeable. No bank or trust company shall require a borrower to place any sum on deposit, or to make deposits in lieu of regular periodic installment payments, or to do or refrain from doing any other act which would entail additional expense or sacrifice, as a condition of a mobile home loan, as the superintendent may from time to time approve. No refund or excess fines shall be required if it amounts to less than one dollar.

(6) A borrower may prepay the loan in full or, with the consent of the bank or trust company, may refinance the loan. In such event, the bank or trust company shall refund: (1) the unearned portion of the interest to the borrower the amount of which portion shall be determined according to a generally accepted actuarial method; provided that if the interest previously deducted (i) was less than ten dollars, no refund shall be required; or (ii) exceeded ten dollars and the earned interest is less than that amount, the bank or trust company may retain such an additional amount as will bring the earned interest to ten dollars and refund the remainder, and provided further, that unless the loan is refinanced, no refund shall be required if it amounts to less than one dollar; and (2) if a charge was made to the borrower for premiums for

insuring the borrower under a credit unemployment insurance policy, group life insurance policy, or under a group health, group accident or group health and accident insurance policy, the excess of the charge to the borrower therefor over the premiums paid or payable by the bank, if such premiums were paid or payable by the bank or trust company periodically, or the refund for such insurance premium received or receivable by the bank or trust company, if such premium was paid or payable in a lump sum by the bank or trust company. No such refund need be made if it amounts to less than one dollar. In the event (i) the maturity of the loan is accelerated due to the default of the borrower or otherwise and judgment is obtained, or (ii) repayment is made pursuant to any such insurance policy, the borrower or his legal representative, as the case may be, shall be entitled to the same refund as if the loan had been prepaid in full on the date of acceleration or repayment.

(7) As a condition of any loan made pursuant hereto, the borrower shall certify that the mobile home, for the purchase of which the loan is made, is intended to be maintained in the state or in a contiguous state as a residence of the borrower, the borrower's spouse, child, grandchild, parent or grandparent. If the mobile home shall not be so maintained on the ninetieth day next succeeding the date of the loan or if it is relocated so as to no longer be located in the state or a contiguous state at any time before the first anniversary of the loan, the loan and all authorized charges shall become immediately due and payable subject only to the refund provisions of paragraph six and the borrower may, if the contract so provides, be required to pay as an additional authorized charge, a penalty in an amount not to exceed two per cent of the face amount of the loan.

(8) No investment shall be made by a bank or trust company pursuant to this subdivision if the total amount invested by it pursuant to this subdivision exceeds, or by the making of such investment will exceed, an amount equal to fifteen per cent of the assets of the bank or trust company.

(9) Subject to such limitations and conditions as the superintendent of financial services may prescribe by general regulation, a bank or trust company may make a loan pursuant to this subdivision which the federal housing administrator has insured or has made a commitment to

insure and may receive and hold such debentures as are issued by the federal housing administrator in payment of such insurance, or which is guaranteed pursuant to the provisions of the act of congress entitled the "Servicemen's Readjustment Act of 1944." No law of this state prescribing or limiting the interest rate upon loans or advances of credit or prescribing a penalty for violation thereof or prescribing the nature, amount or form of security or requiring security upon which loans or advances of credit may be made or prescribing or limiting the period for which loans or advances of credit may be made or limiting the amount of any class of loans, advances of credit or purchases which may be made shall be deemed to apply to loans, advances of credit or purchases made or to loans acquired by purchase pursuant to this paragraph.

5-b. Notwithstanding any inconsistent provision of this section, a bank or trust company may make loans for the purpose of defraying the cost of education of one or more students at a university or college, or at an elementary or secondary school providing education required of minors which may provide for (i) payment of origination fees, or guarantee fees in such amounts as the superintendent may from time to time approve; (ii) capitalization of interest, provided that the borrower has the option to avoid capitalization by paying such interest without penalty; and (iii) deferral and forbearance of payments under circumstances for which such deferral or forbearance could be granted for loans made pursuant to Title IV of the Higher Education Act of 1965 (20 USC 1070 et seq.).

6. The knowingly taking, receiving, reserving or charging a greater rate of interest than that authorized by this section as computed by this section, shall be held and adjudged a forfeiture of the entire interest which the note, bill of exchange or other evidence of debt carries with it, or which has been agreed to be paid thereon, and if a greater rate of interest has been paid, the person paying the same or his legal representative may recover from the bank or trust company twice the entire amount of the interest thus paid.

7. Upon an advance of money, whether or not repayable on demand, to an

amount not less than five thousand dollars, made upon documents of title within article seven of the uniform commercial code or negotiable instruments within article three or article eight of the uniform commercial code pledged as collateral security for such repayment, any bank or trust company may receive or contract to receive and collect as compensation for making such advance any sum which may be agreed upon by the parties to such transaction; provided that such advance is (a) to or for any partner of a firm which is a member firm of a national securities exchange registered with the securities and exchange commission as a national securities exchange under the federal securities exchange act of 1934, as amended, to enable such partner to make a contribution of capital to such firm or to purchase stock of an affiliated corporation of such firm, provided that such partner is actively engaged in the business of such firm and devotes the major portion of his time thereto, or (b) to or for any person who is or will become a holder of stock of a corporation which is a member corporation of such a national securities exchange to enable such person to purchase stock of such corporation or to purchase stock of an affiliated corporation of such corporation, provided that such person is actively engaged in the business of such corporation and devotes the major portion of his time thereto.

8. (a) The superintendent shall have the power to prescribe by regulation (i) the maximum charge which may be imposed in this state by a bank or trust company in connection with a check or other written order drawn upon it on insufficient funds, irrespective of whether the instrument is paid, accepted, or returned by the bank, and (ii) the maximum charge which may be imposed in this state by a bank or trust company in connection with a check or other written order received by it for deposit or collection and subsequently dishonored and returned for any reason by the drawee.

(b) No bank or trust company shall, in connection with the payment, acceptance or return of such check or order, impose any fee, fine, commission or other charge, however designated, in addition to the maximum charge established therefore by the superintendent of financial services pursuant to paragraph (a) of this subdivision, except that nothing herein expressed shall prevent a bank or trust company from

taking, receiving, reserving or charging interest, as authorized by law in connection with credit extended in connection with the payment of such check or order or from imposing any charge in accordance with a written agreement established in accordance with the provisions of subdivision five of this section. A bank or trust company may, as an accommodation to its customers, pay, accept, or return a check or order without charge, or at a lesser charge than the maximum charge established by the superintendent of financial services.

(c) In prescribing a maximum charge pursuant to paragraph (a) of this subdivision, the superintendent shall consider the following factors: (i) the cost of processing an overdraft or returned check or order, as the case may be, (ii) the charge necessary to deter overdrafts or returned checks or orders, as the case may be, and (iii) such other economic or cost factors that the superintendent shall deem to be appropriate. Prior to the superintendent's prescribing any such maximum charge, the superintendent shall issue a written determination as to such maximum charge, reciting the cost and other data upon which the determination is based.

(d) The superintendent of financial services may promulgate such regulations as he or she deems necessary and proper to implement and define the provisions of this subdivision. The superintendent of financial services may prescribe maximum charges from time to time, but not more often than once in any six month period, and shall provide reasonable notice to the public of any change in such maximum charges, of the effective date of such change, which shall not be less than seven days following the adoption of such change by the superintendent of financial services, and of any rule or regulation adopted pursuant to this subdivision.

9. A bank or trust company may, in the case of business or agricultural loans in the amount of twenty-five thousand dollars or more, take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at a rate of not more than five per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve Bank of New York, and such interest may be taken in advance, reckoning the days for which the note, bill, or other evidence of debt has to run.